

OCT 19 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Application of)	MM DOCKET NO. 93-155
)	
RICHARD BOTT II)	File No. BAPH-920917GO
(Assignor))	
)	
and)	
)	
WESTERN COMMUNICATIONS, INC.)	
(Assignee))	
)	
For Assignment of Construction)	
Permit of Station KCVI (FM),)	
Blackfoot, Idaho)	

To: Administrative Law Judge
Arthur I. Steinberg

**MASS MEDIA BUREAU'S OPPOSITION TO BOTT'S REQUESTS
FOR THE CHIEF, MASS MEDIA BUREAU TO TESTIFY**

1. In an October 12, 1993, letter to the Presiding Judge and parties to the proceeding, counsel for Richard P. Bott II ("Bott") stated his intention to call the Chief, Mass Media Bureau to testify. Apparently, it is Bott's intention to question the Bureau Chief concerning the contents of Bott Exhibit 1 (Bott's "Request for Admission" and "Mass Media Bureau's Response to Request for Admission") and the allegation in the Hearing Designation Order, 8 FCC Rcd 4074 (1993) of misrepresentation or lack of candor by Bott. Thereafter, on October 15, 1993, Bott requested that the Chief, Mass Media Bureau be produced for cross-examination with respect to the exhibits exchanged by the Bureau. The Bureau hereby submits its opposition to Bott's efforts to have the Bureau Chief testify in this proceeding.

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2. Bott seeks to examine the Bureau Chief with respect to his personal knowledge of the evidence and/or information the Bureau had in its possession which were the bases for the allegations in the HDO that Bott misrepresented facts to the Commission. The alleged misrepresentations related to Bott's plans to both move to Blackfoot, Idaho and operate Station KCVI (FM) as a commercial facility with a religious format. According to Bott, the Bureau Chief's testimony will show that the Bureau has no evidence of misrepresentation or lack of candor by Bott beyond whatever may be identified, correctly or incorrectly, in the HDO.

3. The Bureau opposes the participation of the Bureau Chief as a witness in this proceeding concerning the contents of its Response and with respect to its exhibits. The Bureau Chief has no personal knowledge of the facts underlying any of the matters raised by Bott. The Bureau's Response was based upon a review by Bureau counsel of the petition to deny Bott's assignment application and related pleadings and the transcript in MM Docket No. 87-223. The Bureau Chief did not personally participate in that review process. His knowledge is limited to the content of the text of the Bureau's Response and he has no personal knowledge of the information underlying it. Similarly, the Bureau Chief is not a sponsoring witness for the Bureau's exhibits and he has no personal knowledge of their contents. No useful purpose would be served by having the Bureau Chief testify

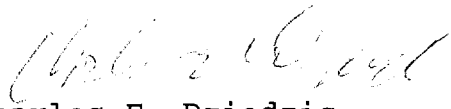
as to any of these matters because of his lack of personal knowledge.

4. It is apparent that Bott is in effect again seeking reconsideration of the HDO. However, such a request is untimely, misplaced and unwarranted. See Section 1.106(a)(1) of the Commission's Rules. Bott previously filed a Petition for Reconsideration of the HDO and associated waiver request which Petition was dismissed at Bott's request. See Order, FCC 93-465, released October 8, 1993. It is also apparent that Bott is again attempting to shift the burdens in this proceeding, an approach which was previously properly rebuffed by the Presiding Judge. Tr. 31-32. This current attempt is also without merit and must be rejected.

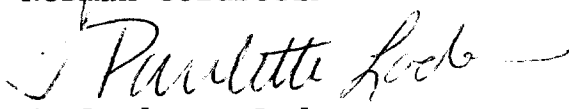
5. The Bureau submits that Bott is attempting to obfuscate the proceeding. It is Mr. Bott, not the Chief, Mass Media Bureau, who is on trial. It is Mr. Bott's representations, state of mind, candor and credibility which must be judged in the crucible of an evidentiary hearing. If the hearing record establishes that Mr. Bott did not misrepresent facts or lack candor with the Commission, his pending assignment application will be granted. In the alternative, should the record establish to the contrary, then appropriate sanctions will be imposed.

Accordingly, the Bureau objects to the calling of the Bureau Chief as a witness, and will not produce him for the hearing.

Respectfully submitted,
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October 19, 1993

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch Mass Media Bureau, certifies that she has, on this 19th day of October 1993, sent by regular United States mail, U.S. Government frank, copies of the foregoing **"Mass Media Bureau's Opposition to Bott's Requests for the Chief, Mass Media Bureau to Testify"** to:

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